IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8592 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CONEY INDUSTRIES

Versus

SHIVLING SUBHRAO

Appearance:

1. Special Civil Application No. 8592 of 1992

Mr. K.B.Naik for M/S TRIVEDI & GUPTA for Petitioner

MR VIJAY H PATEL for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 27/09/2002

ORAL JUDGEMENT

By filing this petition under Article 227 of the Constitution, the petitioner has prayed to set aside the

order and award rendered by the Labour Court,in Reference (LCA) No. 409/85, by which the petitioner is directed to reinstate the respondent in service with back wages.

2. The respondent was employed as a Compositor in the petitioner-Company, and was entitled to receive salary of Rs. 676/- per month. According to him, he was taking active part in Union activities, which was disliked by the Management, and that he was pressurised to put in papers. He did not yield to the pressure and, therefore, his services were abruptly brought to an end on October 19, 1984. He, therefore, raised a dispute regarding validity of the action of the petitioner by which his services were terminated. On failure of conciliation proceedings, the dispute was referred to Labour Court, Ahmedabad for adjudication, where it was numbered as Reference (LCA) No. 409/85. The statement of claim was filed by the respondent to which reply was filed by the petitioner at Exh.7. The case of the petitioner was that the workman was offered employment and yet he did not report for duty and was, therefore, not entitled to reinstatement in service. The respondent had examined himself at Exh.10; whereas on behalf of the petitioner, one Mr.Narendrabhai C.Mehta was examined to prove the case which was pleaded in the written statement. On appreciation of evidence, the Labour Court concluded that the respondent had not abandoned the work, but his services were illegally terminated. It could not be established by the petitioner that the provisions of the Industrial Disputes Act, 1947 were complied with before terminating the services of the respondent and, therefore, a finding was recorded by the Labour Court that termination of services of the respondent was illegal. In view of the aforesaid conclusions, the Labour Court has directed the petitioner to reinstate the respondent in service with back wages, giving rise to the present petition.

3. Mr. K.B.Naik, learned counsel for the petitioner submitted that no evidence was adduced by the respondent to establish that his services were terminated by the petitioner, and as he had failed to report for duty, though work was offered to him, the Labour Court was not justified in concluding that the services of the respondent were terminated. According to the learned counsel for the petitioner, in view of the letter dated November 21, 1984, which was addressed by the petitioner to the respondent, the Labour Court should have held that the respondent had abandoned the service and that his services were never terminated by the petitioner. What was stressed was that the petitioner was ready and

willing to permit the respondent to resume his duties, but as the respondent was not inclined to serve the petitioner-Institute and as he had abandoned the work voluntarily, the petition should be accepted. It was maintained by the learned counsel for the petitioner that the award of the Labour Court is based on no evidence and, therefore, the same should be set aside.

4. Mr. Vijay Patel, learned counsel for the respondent, argued that on appreciation of evidence adduced by the petitioner and the respondent, the Labour Court has recorded a finding of fact that the services of the respondent were terminated by the petitioner illegally and the same should not be interfered with in a petition filed under Article 227 of the Constitution. According to Mr. Patel, learned counsel for the respondent, the case of the respondent that his services were illegally terminated stands amply proved by his evidence which was recorded before the Labour Court and the petition having no substance, should be dismissed.

5. I have considered the submissions advanced at the Bar and the documents forming part of the petition. From the record of the case, it is evident that the case of the respondent was that his services were illegally terminated with effect from October 19, 1984; whereas the case of the petitioner was that he had abandoned the services and that his services were not terminated by the petitioner. In this regard, it is noticed that no documentary evidence, such as, muster role, presence card etc. could be produced by the petitioner to indicate as to how many days the respondent had served the Institute. It is true that before the Labour Court, the letter dated November 21, 1984, allegedly addressed by the petitioner to the respondent, was relied upon to establish that the respondent had abandoned work voluntarily. However, the contents of the said letter could not be proved as required by law and, therefore, was not admitted in evidence. Further, in the days of unemployment, it is not reasonable to infer that one would give up job voluntarily. On appreciation of evidence, the Labour Court has recorded a finding of fact to the effect that the respondent had not abandoned the work and that his services were terminated by the petitioner. This being a pure finding of fact is not liable to be interfered with in a petition filed under Article 227 of the Constitution. The Supreme Court has, time and again, pointed out that the scope of interference by the High Court in a petition under Article 227 of the Constitution is very limited. In Ouseph Mathai & Ors. V. M.Abdul Khadir, (2002)1 SCC 319, the Supreme Court has ruled that

a mere wrong decision is not a ground for exercise of jurisdiction under Article 227. What is explained by the Supreme Court is that the High Court may interfere under Article 227 only where it is established that the Lower Court or Tribunal has been guilty of grave dereliction of duty and flagrant abuse of power, which has resulted into grave injustice to any party. In my view, the petitioner has failed to point out that the Labour Court has been guilty of dereliction of duty or that it has flagrantly abused power, which has resulted into grave injustice. Under the circumstances, the finding that the petitioner had terminated the services of the respondent being eminently just, is hereby upheld. It is not the case of the petitioner that before terminating the services of the respondent, the provisions of the Industrial Disputes Act, 1947 were complies with. In fact, the deposition of the respondent would indicate that after termination of his services, others were employed. Thus, the finding recorded by the Labour Court that termination of services of the respondent is contrary to the provisions of the Industrial Disputes Act, 1947, is also upheld. In view of the above referred to conclusions, the direction given by the Labour Court to the petitioner to reinstate the respondent in service with back wages can hardly be faulted. The petition is, therefore, liable to be dismissed.

For the foregoing reasons, the petition fails and is dismissed. Rule is discharged with no order as to costs.

(J.M.Panchal,J.)

(patel)